

South Dakota

Discharge Planning

PASRR Reference Manual

January 2008

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PASRR History & Process

The Omnibus Budget Reconciliation Act (OBRA) of 1987 prohibits a Medicaid-certified nursing facility (NF) from admitting any individual who has a diagnosis of SMI and/or MR/DD unless that individual has been determined to require the level of care provided by a NF.

Federal criteria established for making determinations are categorized into two levels. The Level I PASRR determines whether individuals meet the NF level of care criteria and whether they are suspected of having SMI and/or MR/DD. The NF level of care assesses the client's medical and physical condition to determine whether he/she requires long term nursing facility care.

One of the responsibilities of the Division of Mental Health and Division of Developmental Disabilities, Department of Human Services, in coordination with the Department of Social Services, is to review applications to Medicaid-certified nursing facilities for people who may have a diagnosed serious mental illness (SMI) and/or mental retardation/developmental disability (MR/DD) regardless of the source of payment for services. This review is called the Pre-admission Screening and Resident Review (PASRR).

If the individual meets, the criteria for NF level of care, and has or is suspected of having a diagnosis of SMI and/or MR/DD, PASRR is conducted to determine the need for specialized services. South Dakota defines "Specialized services" for persons with SMI as a "Long Term Inpatient Psychiatric Hospitalization at Mickelson Center for the Neurosciences (MCN)." However, for persons with MR/DD specialized services are continuous, aggressive generic treatments, therapies or training that prevent or slow down the regression or loss of current optimal functioning.

Under the PASRR provisions, the Division of Developmental Disabilities is responsible to assure that anyone who has a developmental disability and/or mental retardation that was attained prior to the age of 22 is appropriately placed in a long-term care facility. Often times Adjustment Training Centers are able to provide the same level of skilled nursing services in the community as those provided by the nursing facility. Each Adjustment Training Center provides a variety of healthcare services. Not all services are available at all centers. Division staff will work with each nursing facility to determine the best possible placement on an individual basis.

The Division of Mental Health and Division of Developmental Disabilities, Department of Human Services makes the final determination regarding specialized services needs for the individual.

PASRR DEFINITIONS FOR MENTAL ILLNESS, MENTAL RETARDATION, & DEVELOPMENTAL DISABILITIES

CONTINUED STAY REVIEW- a review to determine if an individual in the nursing facility remains appropriate and if specialized services are needed.

LEVEL I SCREENING- the Department of Social Services shall conduct a Level I (PASRR5) screening that identifies each individual who is seeking nursing facility services who may have a mental illness.

LEVEL II SCREENING- the Division of Mental Health shall conduct a Level II review that determines the appropriateness of nursing facility services and specialized services for individuals identified in the Level I screening. The Level I screening and the Level II review make up the preadmission screening resident review, or PASRR, which is the process that is completed when any individual with a mental illness applies to reside in a nursing facility. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility services. A determination whether or not an individual can benefit from specialized services is made. These determinations must be made by the director.

MENTAL ILLNESS- a diagnosis regarding schizophrenia; mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder as defined in the DSM-IV-TR. Mental retardation, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute mental illness;

PASRR- Pre-Admission Screening and Resident Review

SEVERE MENTAL ILLNESS- substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Mental retardation, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness.

SIGNIFICANT CHANGE IN MENTAL HEALTH- a condition defined as a change in the mental status of an individual in a long- term care facility that would require specialized inpatient services at Mickelson Center for the Neurosciences.

MH SPECIALIZED SERVICES- active treatment received in an inpatient setting. i.e. the geriatric unit at the Mickelson Center for the Neurosciences.

MR/DD SPECIALIZED SERVICES – continuous, aggressive generic treatments, therapies or training that prevents or slows down the regression or loss of current optimal functioning.

ADJUSTMENT TRAINING CENTER – provide services which may include residential, vocational, service coordination, and nursing care. Adjustment Training Centers provide residential options for people, such as group homes and supervised apartments. Community living training and residential expanded follow-along are also provided for those who are living on their own or are working toward that goal. Vocational opportunities may include working in the agency workshop, job coaching and pre-vocational training for individuals looking for community jobs and vocational expanded follow-along for those working in the community.

MENTAL RETARDATION – A significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a person's performance.

DEVELOPMENTAL DISABILITY – is any severe chronic disability of a person that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and;
- (5) Reflects the person's need for an array of generic services, met through a system of individualized planning and supports over an extended time, including those of life-long duration.

PASRR Process

Referring agency (hospital, nursing home, Department of Social Services caseworker, Adjustment Training Center, etc.) **identifies an individual that is seeking admission to a nursing facility (NF).**

Contact the DSS Medical Review Team Nurse (MRT) for PASRR Level I.

Information that must be submitted for a PASRR

- Psychological Evaluation from the community/facility (if available)
- Face sheet
- Medical History and Physical Report
- Consultant reports that pertain to the current status of the patient
- Physician progress notes, past 3-5 days of hospitalization
- Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility
- Therapy notes, past 3-5 days, if applicable (RT, OT, ST)
- Current Medication list
- Most current MDS

The MRT reviews the information and determines if--

- There are exemptions from PASRR Level II
- There is a substantiated diagnosis of mental illness and/or mental retardation/developmental disability

The MRT then forwards the PASRR information for a Level II determination--

- The Division of Mental Health (DMH) for people with mental illness
- The Division of Developmental Disabilities (DDD) for people with mental retardation/developmental disability
- And will forward the information to both Divisions for people that have a dual diagnosis (mental illness and mental retardation/developmental disabilities)

(ATTACHMENT B)

Categorical Determination: Request for Notification to Nursing Facility of Need for Outpatient Mental Health Services	

Last Name, First Name, MI

Nursing Facility

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Social Security Number

Date of Birth

Attached is a PASRR Level I form indicating that the above individual has met the categorical determination that nursing facility placement is appropriate and specialized services are not required. However, it appears from the information received that the individual would benefit from outpatient mental health services (supporting documentation attached). Please issue a recommendation for these services to the nursing facility indicated above.

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Signature of Medical Review Team Nurse

Date

(ATTACHMENT AA)

DD/MH/LEVEL I

LEVEL I PASRR REVIEW

Last Name, First Name, MI

Nursing Facility

Social Security Number

Date of Birth

Medical Review Team Determination/Level II Review Not Needed:

	The diagnosis of MR/DD or MI is unsubstantiated.
	The individual is being readmitted to a nursing home from a hospital to which they were transferred for the purpose of receiving care.
	The individual is transferring from one nursing home to another and PASRR has previously been completed.
	The physician has identified the need for a nursing facility stay following hospitalization which will be for less than 30 days.
	There is use of psychotropic medication in the absence of a major mental illness diagnosis.
	There is a diagnosis of anxiety disorder that is not identified as severe and does not appear that it will last longer than one year.
	There is a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear that it will lead to a chronic disability.

Categorical Determination/ Would Not Benefit From Specialized Services, Nursing Facility Placement Appropriate:

	Terminal illness diagnosis (life expectancy of 6 months or less as determined by the physician and/or Hospice care involvement)
	Severe physical illness which has resulted in coma, ventilator dependence, function at brain stem level or a diagnosis such as of end stage COPD, Parkinson's, Huntington's, ALS, or CHF which will result in a level of impairment so severe that an individual could not be expected to benefit from active treatment. §483:130.3.
	A diagnosis of dementia, including Alzheimer's disease and related disorders, in a consumer at least 65 years old. ARSD 46:10:04:16, ARSD 46:20:16:15
	Respite stay 30 days or less.
	Extreme age of an individual (75 years and older)

Medical Review Team RN

Date

REQUEST FOR LEVEL II CHECKLIST

DD _____ MH _____ DD/MH _____

FROM: DSS Nurse Consultant: _____

Patient Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Next of Kin, address, and phone number (if known):

NURSING HOME: _____

Address: _____

Phone Number: _____

Contact Person from referring facility: _____

Attached

_____ Psychological Evaluation from the community/ facility (if available)

_____ Face sheet

_____ Medical History and Physical Report

_____ Consultant reports that pertain to the current status of the patient

_____ Physician progress notes, past 3-5 days of hospitalization

_____ Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility (DD/MH)

_____ Therapy notes, past 3-5 days, if applicable (RT, OT, ST)

_____ Current Medication list

_____ Most current MDS (if available)

FREQUENTLY ASKED QUESTIONS RELATED TO MENTAL HEALTH

- 1) If a resident of the nursing facility is admitted to a Psych Unit and then returns to the nursing facility, does that require a PASRR?
 - NO – As long as the resident already had a PASRR completed on them, that would stand through the hospital stay and would get them back without another or if there is a diagnosis of dementia, including Alzheimer's dementia or other related diagnosis, in the absence of a major mental illness or MRDD diagnosis.
 - YES – If that resident did not already have one then one would need to be completed.
- 2) If a resident was discharged to home and then returned to that nursing facility sometime later would another PASRR have to be completed?
 - YES – If a resident is in the nursing facility for days, weeks, months and is then discharged home and would at sometime later need to return to a nursing facility then PASRR would have to be completed.
- 3) If a resident is on a Psychotropic medication with an order that it is used for a medical condition; i.e. Elavil for peripheral neuropathy. Is a PASRR required?
 - The MRT first investigates the usage of the medication and the indicated outcomes then they would determine if a Level I is appropriate. The MRT would code a categorical determination of "Use of Psychotropic Medication in the absence of a major mental illness diagnosis" on the Level I document. A Level II would not need to be completed.
- 4) If a resident is on a Hypnotic (Temazepam or Halcion), is PASRR required?
 - See #3
- 5) If a resident is taking Lorazepam or Xanax, prn or at HS since hospitalization is PASRR required?
 - See #3
- 6) If a Psychotropic medication was started on a resident after admission would a PASRR be required?
 - NO – only if the definition of significant change in relationship to the Mental Health status has been met.
- 7) If an admission has a diagnosis of depression but is not receiving medications or treatment for this, is a PASRR required?
 - YES – Level I screen needs to be initiated and may be forwarded for a Level II.

- 8) If a PASRR comes to the nursing facility suggesting outpatient therapy for a resident and the resident is refusing therapy, what to do?
- You cannot force someone into therapy but if they request or desire therapy it must be provided to them. The Nursing Facility also needs to recognize mechanisms that would meet the individualized needs of the individual i.e. care plan

CHAPTER 46:20:16

PREADMISSION SCREENING AND RESIDENT REVIEWS

Section

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<u>46:20:16:04</u>	Level II review.
<u>46:20:16:05</u>	Timeliness of reviews.
<u>46:20:16:06</u>	Determination of services.
<u>46:20:16:07</u>	Determination of specialized services.
<u>46:20:16:08</u>	Individuals not requiring nursing facility services but requiring specialized services.
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<u>46:20:16:17</u>	Inter-facility transfers.
<u>46:20:16:18</u>	New admission and readmission.

46:20:16:01. Definitions. Terms used in this chapter mean:

(1) "Active treatment," the implementation of a program of specialized and generic training, treatment, health services, and related services that lead to the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible and to prevent regression or loss of current optimal functional status;

(2) "Dementia," disorders characterized by the development of multiple cognitive deficits, including memory impairment, that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance, or to multiple etiologies such as the combined effects of cerebrovascular disease and Alzheimer's disease;

(3) "Director," the director of the Division of Mental Health;

(4) "New admissions," when an individual is admitted to any nursing facility for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:20:16:14, new admissions are subject to a preadmission screening;

(5) "Nursing facility," as defined in § 67:45:01:01;

(6) "Readmission," when an individual is admitted again to any nursing facility from a hospital. A readmission is not subject to a preadmission screening;

(7) "Resident review," a review to determine if residence in a nursing facility remains appropriate and if specialized services are needed;

(8) "Specialized services," the services, specified by the state, to the individual which, combined with the services provided by the nursing facility or other service providers, results in active treatment; and

(9) "Swing bed," as defined in § 67:45:01:01.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:02. Scope. This chapter applies to any individual with a diagnosis of a mental illness, as defined in § 46:20:01:01, who is applying for nursing facility services or is residing in a nursing facility. The preadmission screening and resident review process must result in a determination made by the director that is based on a physical and mental evaluation of each individual.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:03. Level I Screening. The Department of Social Services shall conduct a Level I screening that identifies each individual who is seeking nursing facility services who may have a mental illness.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:04. Level II review. The division shall conduct a Level II review that determines the appropriateness of nursing facility services and specialized services for individuals identified in the Level I screening. The Level I screening and the Level II review makeup the preadmission screening resident review, or PASRR, which is the process that is completed when any individual with a mental illness applies to reside in a nursing facility. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility services. A determination whether or not an individual requires the level of services provided by a nursing facility and whether or not an individual can benefit from specialized services is made. These determinations must be made by the director.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:05. Timeliness of reviews. The director shall make a determination based upon the Level II review within seven to nine business days of receipt of the Level I screening and all of the information required in § 46:20:16:11.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:06. Determination of services. The director shall determine whether, because of the individual's physical and mental condition, the individual requires the level of services provided by a nursing facility. If the director determines that an individual requires nursing facility services, the nursing facility may admit or retain the individual. If the director determines that an individual does not require nursing facility services, the individual cannot be admitted. Nursing facility services are not a covered Medicaid service for that individual and further screening is not required.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:07. Determination of specialized services. If the director determines that the individual requires nursing facility services, the director shall also determine whether the individual may benefit from specialized services. If the director determines that an individual requires both nursing facility services and specialized services, the nursing facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized

services needed by the individual in the nursing facility. If the director determines that the individual does not require nursing facility services and may benefit from specialized services, the director shall provide the individual with information regarding service options.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:08. Individuals not requiring nursing facility services but requiring specialized services. For any individual who has continuously resided in a nursing facility at least 30 months before the date of the determination and who requires only specialized services, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Offer the individual the choice of remaining in the nursing facility or of receiving services in an alternative setting;

(2) Inform the individual of the institutional and non-institutional alternatives covered under the state Medicaid plan;

(3) Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the nursing facility, including the effect on readmission to the nursing facility; and

(4) Provide, or arrange the provision of, specialized services for the mental illness.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:09. Specialized services. For any individual who requires only specialized services and who has not continuously resided in a nursing facility at least 30 months before the date of the determination, the division shall, in consultation with the individual's family or legal representative and caregivers:

(1) Arrange for the safe and orderly discharge of the individual from the facility;

(2) Prepare and orient the individual for discharge; and

(3) Provide, or arrange the provision of, specialized services for the mental illness.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:10. Length of stay. For the purpose of establishing length of stay in a nursing facility, the 30 months of continuous residence in a nursing facility may include temporary absences for hospitalization or therapeutic leave and may include consecutive residences in more than one nursing facility.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:11. Data requirements. The data used for determining if nursing facility services and specialized services are required must include:

- (1) A comprehensive social and developmental history and physical, including:
 - (a) Medical history;
 - (b) Review of body systems;
 - (c) Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and
 - (d) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;
- (2) A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;
- (3) A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;
- (4) A comprehensive psychiatric or psychological evaluation including a complete psychiatric and developmental history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal, or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations; and
- (5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This assessment must conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:12. Appeal procedure. The individual, or the individual's guardian, if any, may appeal the PASRR Level II determination within 30 calendar days of receipt of the letter pursuant to SCDL chapter 1-26. The individual, or the individual's guardian, if any, must make a written request to the Department of Social Services. Upon request, the individual, or the individual's guardian, if any, will be provided with information in an accessible format. Any costs associated with legal counsel obtained to represent the individual are not the responsibility of the Department of Human Services or the Department of Social Services.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:13. Level II review exemptions. An individual is exempt from a Level II review when at least one of the following occurs:

- (1) The diagnosis of mental illness is unsubstantiated;
- (2) The individual is readmitted to a nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;
- (3) The individual is transferred from one nursing facility to another and a PASRR has previously been completed;
- (4) The physician identifies the need for rehabilitation following hospitalization for a duration of less than 30 days;
- (5) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear to be a chronic disability;
- (6) The individual is admitted to a swing bed;
- (7) The individual is using psychotropic medication in the absence of a major mental illness diagnosis; or
- (8) The individual has a diagnosis of an anxiety disorder that is not identified as severe and does not appear to be leading to a chronic disability.

The Department of Social Services shall complete a Level I screening or PASRR 5 form to notify appropriate parties of the determination of the exemption.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:14. Exempt hospital discharge. An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

(1) The individual is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(2) The individual requires nursing facility services for the condition that care was received in the hospital; and

(3) The individual's attending physician has certified before admission to the nursing facility that the individual is likely to require less than 30 calendar days of nursing facility services.

If an individual enters a nursing facility as an exempt hospital discharge and is later found to require more than 30 days of nursing care, the director shall conduct a resident review within 40 calendar days of admission.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:15. Categorical determinations. The following situations, known as categorical determinations approved by the director, warrant nursing facility services but do not warrant specialized services:

(1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of 6 months or less;

(2) A severe physical illness that has resulted in coma or ventilator dependence;

(3) The age of an individual is 75 years or older; or

(4) A diagnosis of dementia, including Alzheimer's disease, in a consumer at least 65 years old.

For any of these situations, the Department of Social Services shall complete a Level I screening or PASRR 5 form. A copy of the form shall be sent to the division and the appropriate nursing facility.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:16. Outpatient mental health services needed -- Categorical determinations. An individual 75 years of age or older, who meets the extreme age categorical

determination that nursing facility placement is appropriate, may require outpatient mental health services. When the Department of Social Services has identified an individual who would benefit from outpatient mental health services, a PASRR 5-A form shall be submitted to the division. If information supports the need for outpatient mental health services, the director shall issue a PASRR 5-B form recommending such services.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:17. Inter-facility transfers. An inter-facility transfer occurs when the individual is transferred from one nursing facility to another, with or without an intervening hospital stay. Inter-facility transfers are not subject to a preadmission screening. If an individual transfers from a nursing facility to a hospital or to another nursing facility, the transferring nursing facility is responsible for ensuring that copies of the individual's preadmission screening review findings accompany the individual.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

46:20:16:18. New admission and readmission. A new admission occurs when an individual is admitted to any nursing facility for the first time or when an admission does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:20:16:14, new admissions are subject to a preadmission screening. A readmission occurs when an individual is admitted for the second time to any nursing facility from a hospital. A readmission is not subject to a preadmission screening.

Source: 29 SDR 80, effective December 10, 2002.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26.

CHAPTER 46:10:04

PREADMISSION SCREENING AND CONTINUED STAY REVIEWS

Section

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<u>46:10:04:18</u>	New admission and readmission.

46:10:04:02. Level I screening. The DSS shall conduct a Level I screening that consists of identifying each individual who is seeking nursing facility services who may have mental retardation or a developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:03. Level II review. The DHS shall conduct a Level II review that consists of determining appropriateness of nursing facility services and specialized services for individuals identified in the Level I screening. The Level I screening and the Level II review make up the PASRR or preadmission screening resident review which is the process that is completed when all individuals with mental retardation or developmental disability apply to reside in nursing facilities. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility services. A determination whether or not an individual requires the level of services provided by a nursing facility and whether or not an individual can benefit from specialized services is made. These determinations must be made by the director.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:04. Director. The director of the Division of Developmental Disabilities is the state mental retardation and developmental disability authority. The director is responsible for both the evaluation and determination functions for individuals with mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:04. Director. The director of the Division of Developmental Disabilities is the state mental retardation and developmental disability authority. The director is responsible for both the evaluation and determination functions for individuals with mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:05. Timeliness of reviews. The director shall make each PASRR Level II determination within seven to nine business days of receipt of the Level I screening and all the information required in § 46:10:04:11.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:06. Determination of services. The director shall determine whether, because of the individual's physical and mental condition, the individual requires the level of services provided by a nursing facility. If the director determines that an individual requires nursing facility services, the nursing facility may admit or retain the individual. If the director determines that an individual does not require nursing facility services, the individual cannot be admitted. Nursing facility services are not a covered Medicaid service for that individual and further screening is not required.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:07. Determination of specialized services. If the director determines that the individual requires nursing facility services, the director shall also determine whether the individual may benefit from specialized services. If the director determines that an individual requires both nursing facility services and specialized services, the nursing facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized services needed by the individual in the nursing facility. If the director determines that the individual does not require nursing facility services and may benefit from specialized services, the director shall provide the individual with information regarding service options.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:08. Individuals not requiring nursing facility services but requiring specialized services. For any individual who has continuously resided in a nursing facility at least 30 months before the date of the determination and who requires only specialized services, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Offer the individual the choice of remaining in the nursing facility or of receiving services in an alternative setting;

(2) Inform the individual of the institutional and non-institutional alternatives covered under the state Medicaid plan;

(3) Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the nursing facility, including the effect on readmission to the nursing facility; and

(4) Regardless of the individual's choice, provide for, or arrange for the provision of, specialized services for the mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:09. Specialized services. For any individual who requires only specialized services and who has not continuously resided in a nursing facility at least 30 months before the date of the determination, the state shall, in consultation with the individual's family or legal representative and caregivers:

- (1) Arrange for the safe and orderly discharge of the individual from the facility;
- (2) Prepare and orient the individual for discharge; and
- (3) Provide for, or arrange for the provision of, specialized services for the mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:10. Length of stay. For the purpose of establishing length of stay in a nursing facility, the 30 months of continuous residence in a nursing facility may include temporary absences for hospitalization or therapeutic leave and may consist of consecutive residences in more than one nursing facility.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:11. Data requirements. For determining if nursing facility services and specialized services are required, at a minimum, the data used must include:

- (1) A comprehensive social and developmental history and physical, including:
 - (a) Medical history;
 - (b) Review of body systems;

(c) Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(d) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;

(2) A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;

(3) A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;

(4) A comprehensive psychiatric or psychological evaluation including a complete psychiatric and developmental history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations;

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This assessment must conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:12. Determination cannot be countermanded. A PASRR determination made by the director may not be countermanded by the DSS. The director shall issue a written letter for any determination of a Level II review. The letter shall include the name of each professional who performed an evaluation used to make the determination, the date on which each portion of the evaluation was administered, and any other information used to make the determination. A copy of this letter shall be sent to the individual, family, guardian, nursing facility, or any other party affected by the determination. The individual may appeal this determination within 30 calendar days of receipt of the letter according to SDCL chapter 1-26. The individual must make a written request to the DSS. Upon request the individual will be provided with information in an accessible format. Any costs associated with legal counsel obtained by the individual are not the responsibility of the DHS or DSS.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:13. Residency. The director of the state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:14. Level II exemptions. An individual is exempt from a PASRR Level II review if at least one of the following occurs:

- (1) The diagnosis of mental retardation or developmental disability is unsubstantiated;
- (2) An individual is readmitted to a nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;
- (3) An individual is transferred from one nursing facility to another and a PASRR has previously been completed;
- (4) The physician identifies the need for rehabilitation following hospitalization for a duration of less than 30 days;
- (5) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear to be a chronic disability;
- (6) The individual is admitted to a swing bed.

The DSS shall complete a PASRR 5 form to notify appropriate parties of the determination of the exemption.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:15. Exempt hospital discharge. An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

- (1) The individual is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;
- (2) The individual requires nursing facility services for the condition that care was received in the hospital; and

(3) The individual's attending physician has certified before admission to the nursing facility that the individual is likely to require less than 30 calendar days of nursing facility services.

If an individual enters a nursing facility as an exempt hospital discharge and is later found to require more than 30 days of nursing care, the director shall conduct a continued stay review within 40 calendar days of admission.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:16. Categorical determinations. The following situations, known as categorical determinations, approved by the director, warrant nursing facility services but do not warrant specialized services:

(1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of six months or less;

(2) A severe physical illness which has resulted in a coma or ventilator dependence;

(3) A diagnosis of dementia, including Alzheimer's disease, in an individual at least 65 years old;

(4) The age of an individual is 75 years or older.

For any of these situations, the DSS shall complete a PASRR 5 form. A copy of the form shall be sent to the DHS and the appropriate nursing facility.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:17. Inter-facility transfers. An inter-facility transfer occurs when the individual is transferred from one nursing facility to another, with or without an intervening hospital stay. Inter-facility transfers are not subject to a preadmission screening. If an individual transfers from a nursing facility to a hospital or to another nursing facility, the transferring nursing facility is responsible for ensuring that copies of the individual's preadmission screening review findings accompany the individual.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26

46:10:04:18. New admission and readmission. A new admission occurs when an individual is admitted to any nursing facility for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:10:04:15, new admissions are subject to a preadmission screening. A readmission occurs when an individual is admitted for the second time to any nursing facility from a hospital. A readmission is not subject to a preadmission screening.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

GUIDANCE TO SURVEYORS—LONG TERM CARE FACILITIES

TAG #	REGULATION	GUIDANCE TO SURVEYORS
F285	<p>(m) Preadmission screening for mentally ill individuals and individuals with mental retardation</p> <p>(1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—</p> <p>(i) Mental Illness as defined in paragraph (m)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission;</p> <p>(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and</p> <p>(B) If the individual requires such level of services, whether the individual requires specialized services for mental retardation.</p> <p>(ii) Mental retardation, as defined in paragraph (m)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission—</p> <p>(A) That, because of the physical and mental conditions of the individual, the individual requires the level of service provided by a nursing facility; and</p> <p>(B) If the individual requires such level of services, whether the individual requires specialized services for mental retardation.</p> <p>(2) Definitions. For purpose of this section—</p> <p>(i) An individual is considered to have</p>	<p><u>483.20(n) Intent:</u></p> <p>To ensure that persons with mental illness and mental retardation receive the care and services they need in the most appropriate setting.</p> <p>“Specialized services” are those services that the State is required to provide or arrange for that raise the intensity of services to the level needed by the resident. That is, specialized services are an “add-on” to NF services—they are of a higher intensity and frequency than specialized rehabilitation services, which are provided by the NF.</p> <p>The statute mandates preadmission screening for all individuals with mental illness (MI) or mental retardation (MR) who apply to NFs, regardless of the applicant’s source of payment, except as provided below. (See 1919(b)(3)(f).) Residents readmitted and individuals who initially apply to a nursing facility directly following a discharge from an acute care stay exempt if:</p> <ul style="list-style-type: none"> • They are certified by a physician prior to admission to require a nursing facility stay of less than 30 days; and • They require care at the nursing facility for the same condition for which they were hospitalized. <p>The State is responsible for providing specialized services to resident with MI/MR residing in Medicaid-certified facilities. The facility is required to provide all other care and services appropriate to the resident’s condition. Therefore, if a facility has residents with MI/MR, do not survey for specialized services, but survey for all other</p>

	<p>“mental illness” if the individual has a serious mental illness defined at 483.102(b)(1).</p> <p>(ii) An individual is considered to be “mentally retarded” if the individual is mentally retarded as defined in 483.102(b)(3) or is a person with a related condition as described in 42 CFR 1009.</p>	<p>requirements, including resident rights, quality of life, and quality of care.</p> <p>If the resident’s PAS report indicates that he or she needs specialized services but the resident is not receiving them , notify the Medicaid agency. NF services ordinarily are not the intensity to meet the need s of the residents with MI and MR.</p> <p><u>483.20(m) Probes:</u></p> <p>If sampled residents have MI or MR, did the State Mental Health or Mental Retardation Authority determine:</p> <ul style="list-style-type: none"> • Whether the residents needed the services of the NF? • Whether the residents need specialized services for their MI or MR?¹
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A Roadmap of South Dakota's Revised Mental Health Code:

The Involuntary Commitment and Voluntary Hospitalization of Adults.

Written by Dennis Cichon

Revised and updated 2007, by the Division of Mental Health,
upon permission by Dennis Cichon

Introduction

Federal law required that each state develop and implement a plan for the delivery of a comprehensive array of treatment and other services to individuals with mental illness. A qualifying state plan must meet certain requirements including provisions for the establishment of an organized, community-based system of care for the mentally ill and services designed to reduce the rate of hospitalization.

I. INVOLUNTARY COMMITMENT OF ADULTS

All commitments must be made under the emergency commitment procedures governed by SDCL 27A-10.

1. Who is subject to commitment? The Substantive Criteria

A person is subject to involuntary commitment if:

- a. The person has a severe mental illness;
- b. Due to the severe mental illness, the person is a danger to self or others; and
- c. The individual needs and is likely to benefit from treatment.

“Severe Mental Illness” is defined as: A substantial organic or psychiatric disorder of thought, mood, perception, orientation or memory which significantly impairs judgement, behavior or ability to cope with the basic demands of life. Mental retardation, epilepsy, other developmental disabilities, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness. **(27A-1-1 (17))**

“Danger to Self” is defined as:

- a. behavior due to severe mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon himself in the near future. Such behavior shall be evidenced by the person’s treatment history and the person’s recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person’s previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or
- b. a reasonable expectation of danger of serious personal harm in the near future, due to a severe mental illness, as evidenced by the person’s treatment history and the person’s recent acts or omissions which demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person’s severe mental illness. **(27A-1-1 (5))**

“Danger to Others” is defined as Behavior due to severe mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon another person in the near future. Such behavior shall be evidenced by the person’s treatment history and the person’s recent acts or omissions which constitute a danger of serious

physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out. **(27A-1-1 (4))**

2. Procedures for Apprehension

A. Petition Filing

Any person eighteen years of age or older may file a petition with the county board of mental illness alleging that the subject is severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm of him/herself or others. The petition must be on a form, verified by affidavit, and must include the reasons for its filing and other information mandated by statute. **(27A-10-1)**

After examining the petition, the chair of the board of mental illness may order law enforcement or a designee to apprehend the person if the chair has a probable cause to believe that the person meets the commitment criteria. The person must be transported to an "appropriate regional facility." At this point, the person may not be taken to the South Dakota Human Services Center. Moreover, the person may not be detained in a jail unless there is no other appropriate regional facility available. In any event, the person may not be held in a jail for longer than twenty-four hours on a mental illness hold alone. **(27A-10-2)**

B. Apprehension by Peace Officer

A peace officer may apprehend a person even if a petition has not been filed. The officer, however, must have probable cause to believe that the person is severely mentally ill and in such condition that immediate intervention is necessary to prevent harm. The officer must transport the person to an appropriate regional facility other than the Human Services Center. The restrictions on use of a jail, explained above, continue to apply. A petition must be filed in a forthwith manner with the chair of the county board of mental illness. If a petition is not filed with the chair of the county board within twenty-four hours, the person must be released. **(27A-10-3; 27A-10-4)**

"Appropriate Regional Facility" is defined as: A facility designated by the Department of Human Services for pre-hearing custody. The facility must be as close as possible to where the person was apprehended. The facility must be no more restrictive of mental, social, or physical freedom than is necessary to protect the person or others from physical injury. In determining the least restrictive facility, considerations shall include the preferences of the apprehended person, the environmental restrictiveness of the setting, the proximity of the facility to the patient's residence, and the availability of family, legal, and other community resources and support. **(27A-1-1 (2))**

C. Right to Notice

Immediately after a person is apprehended, she/he must be notified both orally and in writing of the following:

- a. The right to immediately contact a person of choice;
- b. The right to immediately contact and be represented by an attorney;
- c. That she/he will be examined by a qualified mental health professional, designated by the chair of the county board, within twenty-four hours of being taken into custody to determine whether custody should be continued;
- d. The right to an independent examination if custody is continued; and the right to a hearing within five days, six, if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period.
- e. The cost of post commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to insure payment. **(27A-10-5)**

D. Examination Within Twenty-Four Hours

Within twenty-four hours after apprehension, the person will be examined by a qualified mental health professional designated by the chair of the county board. Preceding the examination, the examiner must identify himself/herself and explain the nature and purpose of the examination. The person must be informed that the examination is being performed to assist in the determination of whether custody should continue. The person must also be informed that the results of the examination may be used as evidence in a commitment hearing. The examiner must immediately report the findings to the chair of the county board.

If the chair of the county board determines that the examination does not support finding that the person meets the involuntary commitment criteria, the person must be released. The county in which the person was apprehended must provide transportation back to that county, if the person so desires.

If the examination and an investigation of the petition indicate that the person does meet the commitment criteria, the board chair may order continued detainment in an appropriate regional facility. At this point, the person may be transported to the Human Services Center, but only if necessary. **(27A-10-6; 27A-10-7)**

E. Notice to Community Mental Health Center

Upon being informed of the apprehension of a person, the chair of the county board shall notify the area's community mental health center. **(27A-10-16)**

F. Request for Voluntary Admission

The chair of the county board shall determine whether a detained person may voluntarily admit him/herself into a facility or program. **(27A-10-7.1)**

3. The Hearing Process

A. Service of Notice

Certified copies of the petition and notice of hearing shall be personally served forthwith by the sheriff on the person prior to the hearing. The notice must include the following:

- a. The time, date, and place of hearing;
- b. The right to be represented by an attorney retained by the person or appointed by the board chair;
- c. Notice of the twenty-four hour examination by a qualified mental health professional;
- d. The qualified mental health professional and the defense lawyer have access to the person's medical records; and
- e. The right of the person to obtain an independent examination at his/her own expense; if indigent, the county will bear the expense. **(27A-11A-5)**

B. Assignment of Counsel

If upon completion of the twenty-four hour examination, it is determined that a hearing shall be held, the board chair must immediately assign counsel to the person if she/he has not retained an attorney. In no instance may a person not be represented by counsel. **(27A-11A-7)**

C. Duties of Counsel

An appointed attorney shall represent the interests of the person, advocate the person's legal rights, and otherwise fully represent the person. The attorney shall serve as an advocate for the person rather than a guardian ad litem. **(27A-11A-26)**

D. Timing of Hearing

A person is entitled to an involuntary commitment hearing within five days after being taken into custody, within six, if there is a Saturday, Sunday, or holiday within that time period or within seven days if there is a Saturday, Sunday, **and** holiday within that time period. **(27A-10-8)**

E. Location of Hearing

The hearing shall be held in the county courthouse or such other place as the board chair may designate with due regard to the rights, safety, and comfort of the person. **(27A-11A-28)**

F. Personal Appearance and Right to Present Evidence

A person has the right to appear personally at the hearing and testify on his/her own behalf, but may not be compelled to do so. If a person decides not to appear, the board may not inquire into the reasons for that decision. The person has the right to require the attendance of witnesses, to cross-examine witnesses, and to present evidence. **(27A-11A-11)**

G. Closed Hearing

The board may exclude the public from attending a hearing. The board, however, must permit the attendance of any person requested to be present by the proposed patient. (27A-11A-11)

H. Pre-Hearing Treatment

If the person is receiving treatment prior to the hearing, the qualified mental health professional shall take all reasonable precautions to ensure that the person is not so affected by drugs or other treatment as to be hampered in preparing for or participating in the hearing. The board must be provided with a record of all treatment the person has received since being taken into custody. (27A-11A-10)

I. Testimony on Alternative Placements

An independent qualified mental health professional must assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment. This mental health professional must testify at the hearing and explain what alternatives are or should be made available, what alternatives were investigated, and why any investigated alternatives are not deemed appropriate. (27A-10-9)

J. Rules of Evidence

The rules of evidence shall be followed at all hearings and reviews. (27A-11A-24)

4. The Hearing Determination

Upon completion of the hearing, the board may order the involuntary commitment of the person if it makes the following findings by clear and convincing evidence:

- A.** The person meets the involuntary commitment criteria in **SDCL 27A-1-2**, as explained above;
- B.** The person needs and is likely to benefit from the treatment which is proposed; and
- C.** The commitment is to the least restrictive treatment alternative. (27A-10-9.1)

“Least restrictive treatment alternative” is defined as the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of mental, social, or physical freedom than necessary to achieve a reasonably adequate therapeutic benefit. The following considerations shall be taken into account in determining the least restrictive alternative:

- 1. The values and preferences of the patient;
- 2. The environmental restrictiveness of treatment settings;

3. The duration of treatment;
 4. The physical safety of the patient and others;
 5. The psychological and physical restrictiveness of treatments;
 6. The relative risks and benefits of treatments to the patient;
 7. The proximity of the treatment program to the patient's residence; and
 8. The availability of family and community resources and support. **(27A-1-1 (11))**
- If the above findings are not made, the board shall order that the person be released. The referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. **(27A-10-9.1)**

5. Duration of Commitment

Upon completion of the hearing, the Board of Mental Illness may order the involuntary commitment of the person for an initial period not to exceed **ninety days**. **(27A-10-9.1)**

6. Record of Proceedings

A court reporter shall attend all hearings of the county board and keep a stenographic or tape record of the proceedings. A person who has been committed may request a certified transcript or tape recording of the hearing. The person must pay for such transcript or recording unless indigent. **(27A-11A-2)**

7. Appeal

An order of involuntary commitment may be appealed to the circuit court. The person shall be advised of the right to appeal both verbally and in writing upon the termination of the hearing. **(27A-11A-25)**

8. Review Hearings

Within ninety days after the involuntary commitment of a person who is still under the commitment order, the county board shall conduct a review hearing to determine if the person continues to meet the commitment criteria. Notice of this hearing shall be given to the person and his/her attorney at least ten days in advance. If the person has not retained counsel, the board chair must appoint an attorney at least ten days in advance of the review hearing.

At the time of notice, the person and attorney shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered shall be immediately transmitted to the person and attorney. The person is entitled to all rights and procedures applicable to an initial commitment hearing except that a new petition need not be filed.

If, upon completion of the review hearing, the board finds by clear and convincing evidence that the person continues to meet the commitment criteria, the board may order continued commitment to the same or alternative placement for a period not to exceed six months. The person is entitled to another review hearing within the six-month period. If the board issues another order of continued commitment, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the board may order continued commitment for up to twelve months.

Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment. (27A-10-14)

9. Additional Review Hearings

The board may schedule review hearings in addition to those required by the above stated provision. (27A-10-15)

10. Noncompliance with Treatment Order

If a person ordered to undergo a program of involuntary treatment fails to comply with the order, the county board must conduct a hearing to determine compliance or noncompliance. If noncompliance is determined, the board may order an alternative program of treatment which is consistent with the commitment criteria. The person is entitled to representation by counsel and to notice delivered at least five days in advance of the hearing. (27A-11A-21)

11. Unsuccessful Treatment

If at any time while a person is under an order of commitment, it comes to the attention of the county board that the program of treatment has not been successful; the board shall conduct a hearing. This hearing must be held within five days, or six if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period. The person shall be represented by counsel and be given at least five days notice of the hearing.

If the board finds that the program of treatment has not been successful, it shall order an alternative program of treatment consistent with the commitment criteria. The director of the facility to which a person is committed is under a duty to notify the county board whenever a treatment program has proven unsuccessful. (27A-11A-22)

12. Transfer of Patient

A person under an order of commitment may not be transferred to a more restrictive facility without a hearing before the county board prior to the transfer. The person has the right to be represented by an attorney and must be provided notice at least five days in advance of the hearing. The only exception is when the transfer is necessary to prevent the immediate danger of physical harm to the person or others. In such a case, the board chair may authorize the transfer pending the hearing. The hearing must be held within five days of the transfer or six, if there is a Saturday, Sunday, and holiday within that time period.

If upon completion of the hearing, the board finds by clear and convincing evidence that the transfer is in accord with the commitment criteria, the board may so order the transfer. The transfer hearing shall not substitute for any of the review hearings the person is otherwise entitled to. (27A-11A-19)

II. VOLUNTARY INPATIENT TREATMENT FOR ADULTS

1. Admission Criteria (27A-8-1)

A person, eighteen years of age or older, may apply to the South Dakota Human Services Center or other inpatient psychiatric facility for voluntary hospitalization. The person must execute a written application for admission and be capable of providing an informed consent to the admission.

“Informed consent” is defined as: Consent voluntarily, knowingly and competently given without any element of force, fraud, deceit, duress, threat or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding. **(27A-1-1 (9))**

The person may be admitted if the following requirements are met:

- a. If, after the examination by a staff psychiatrist, the facility director determines that the applicant is clinically suitable for inpatient treatment. If a staff psychiatrist is unavailable at the time of application, admission may be granted pending an examination by a staff psychiatrist within one working day;
- b. A less restrictive treatment alternative is inappropriate or unavailable;
- c. The applicant is in need of and will likely benefit from treatment which is available at the facility;
- d. The requirements in **SDCL 27A-8-15** have been met. This section requires that before admission, an explanation be made to the applicant of the nature of inpatient status, including the types of treatment available, and restraints or restrictions to which she/he may be subject. This explanation must include the fact that the person's status may be converted to involuntary status under certain circumstances. The person must also be informed of all rights to which she/he is entitled; and
- e. The applicant does not have medical needs that are beyond the capacity of the center of the facility.

Section **27A-8-15** also requires that the applicant give an informed consent to admission both orally and in writing upon an application form. The application form must contain specified information. A copy of the signed application form and a written statement of the patient's rights shall be given to the patient and any one other person designated by the patient.

2. Voluntary Status Required

An applicant for voluntary admission, who is clinically suitable for voluntary inpatient treatment, shall be admitted only on such voluntary status. If admission is denied, the facility must provide the person with a referral to other facilities or programs that may be appropriate. **(27A-8-16)**

3. Voluntary Admission by Guardian

If a person desires inpatient treatment but is incapable of providing an informed consent to this treatment, the person's next of kin may exercise a substituted informed consent to admission. The admission criteria continue to apply to the admission. Both guardian and the person must sign the application form. The patient is entitled to all the rights accorded other voluntary patients, including the right to immediate discharge upon written request. **(27A-8-18)**

4. Voluntary Admission by Next of Kin

If a person desires inpatient treatment but is incapable of providing an informed consent to this treatment, the person's next of kin may exercise a substituted informed consent to admission. The admission criteria continue to apply to these admissions. Both the next of kin and the person must sign the application form. The person may be admitted for a period not to exceed fourteen days.

During the fourteen-day admission period, the consenting next of kin must file a petition in circuit court for an order authorizing the admission. If a petition is timely filed, the admission of a non-objecting person may continue until the court can hold the hearing. If a petition is not timely filed, the person must be discharged upon the expiration of the fourteen-day admission period.

Notice of the hearing must be delivered to the next of kin and the patient. The next of kin and the patient's attendance at the hearing are required unless the court, for good cause, excuses attendance by the patient. The court may authorize the admission upon a finding that:

- a. The person is voluntarily assenting to admission without any element of force, duress, threat, or other form of coercion; and
- b. The voluntary admission criteria are met.

The person is entitled to all rights accorded other voluntary patients, including the right to immediate discharge upon written request. **(27A-8-19)**

5. Periodic Assessments

Thirty days after the voluntary admission of a patient and every ninety days thereafter, the facility director must review the patient's records and assess the need for continued inpatient treatment. If continued treatment is indicated, the director must request from the patient an oral and written affirmation of informed consent to continued admission. If the patient was admitted upon the substituted informed consent of a guardian or next of kin and continues to be incapable of exercising an informed consent, substituted informed consent to continuing admission must be obtained from the guardian or next of kin. A failure to obtain an affirmation of informed consent from the patient, guardian, or next of kin constitutes notice of intention to terminate inpatient treatment. **(27A-8-17)**

6. Release Procedures

A. Request for Release

An adult voluntary patient has the right to immediate discharge upon written notice of his intention to be released. The facility must promptly supply the patient with the written discharge form upon request. **(27A-8-10)**

B. Detainment After Request for Release

A voluntary patient who has submitted a written request for release may be detained for a period not to exceed twenty-four hours (excluding weekends or holidays) from receipt of the written notice if the facility has probable cause to believe that she/he meets the involuntary commitment criteria. The facility director must immediately notify the patient of this hold and explain its nature. The director must also notify the chair of the county board or a peace officer of the time of receipt of the patient's notice, the time the hold was initiated, the circumstances necessitating the hold, and the time a petition for involuntary commitment will be filed. This information must also be delivered to the patient.

If a petition is not filed with the chair of the county board within twenty-four hours of the facility's receipt of the patient's request for release (excluding weekends and holidays), the patient must be immediately discharged. If a petition is timely filed, the patient may be held pursuant to the involuntary commitment procedures explained above. **(27A-8-10.1)**

7. Notice of Release Procedures

Upon voluntary admission, at the end of the first six months of hospitalization, and annually thereafter, the patient shall be given a separate written notice of release procedures. A copy of these procedures shall also be given to any one other person the patient so designates. Release procedures must be prominently and permanently displayed in every psychiatric ward. **(27A-8-14)**

8. Conversion to Involuntary Status Without Request for Release

The facility may file a petition for the involuntary commitment of a voluntary patient even in the absence of a request for release. A petition may be filed only for the following reasons:

- a. The facility has probable cause to believe the patient meets the involuntary commitment criteria; and
- b. The patient, including one admitted upon a substituted informed consent of a guardian or next of kin, is unwilling or unable to consent to the treatment deemed necessary by the treating physician and there are not other appropriate treatments to which the patient is willing or able to consent; or
- c. The patient is unwilling or unable to affirm consent to continued admission when statutorily required. **(27A-8-11.2)**

III. INDIVIDUAL RIGHTS

1. Application of Rights

Chapter 27A-12 governs the rights of any individual subject to the authority of the mental health code, either on a voluntary or involuntary basis. **(27A-12-1.1)**

2. Competence

No person may be deemed incompetent to exercise any right or privilege accorded citizens of South Dakota solely by reason of detention, admission, or commitment under the mental health code. **(27A-12-1.2)**

3. Privacy and Dignity

Each person has the right to a humane environment that affords appropriate individual privacy, individual dignity, and reasonable protection from harm. These rights shall be respected at all times and upon all occasions, including when a person is taken into custody, detained or transported. **(27A-12-1)**

4. Notice of Rights

A person is entitled to prompt oral and written notice of his/her rights upon entering a facility or program. A written list of rights shall be prominently displayed in an accessible location. **(27A-12-3)**

5. Rights Enumerated

Any person, if otherwise qualified, has the right to:

- a. Refuse to be photographed or fingerprinted;
- b. Remain silent and fully clothed;
- c. Have access to
 - Toilet facilities upon request
 - His/her own money unless a conservator has been appointed;
 - To keep as much money in his/her personal possession as he/she deems is necessary;
 - To purchase personal articles;
 - A minimum of two hours exercise daily;
- d. Receive any visitors during regular visiting hours; communicate with individuals outside the facility; send and receive unopened mail; adequate writing material, envelopes and stamps; access to a telephone; local calls without charge; long distance calls if paid for or charged to another number.
- e. Wear his/her own clothes; keep his/her own toilet articles; adequate storage space;
- f. Converse with others in private;
- g. Receive prompt, adequate medical treatment;
- h. Voluntary participation in religious services in accordance with personal needs, desires, and capabilities and also in accordance with the basic right to freedom of religion.

A. Reasonable Limitations

Reasonable limitations may be placed on the above-listed rights on an individual basis if essential to prevent the person from violating a law or to prevent substantial and serious physical or mental harm to himself or others. Each limitation must be approved by the facility director. **(27A-12-3.1)**

6. Spiritual Treatment

Each person has the right to treatment by spiritual means through prayer. **(27A-12-3.2)**

7. Access to Rights Protection Services

A person has the right to engage in private communications in appropriate facilities with any available right protection service or system such as the South Dakota Advocacy Services. **(27A-12-3.3)**

8. Access to Attorney and Physicians

A person may communicate with a legal representative or a private physician subject to the facility's normal access restrictions. The person's legal representative shall have access to all records and information pertaining to the person. **(27A-12-3.18)**

9. Labor

A person may perform labor for a facility only upon a voluntary and compensated basis. One half of such compensation is exempt from collection for services provided by the facility. Discharge may not be conditioned on performance of labor. **(27A-12-3.4; 27A-12-3.5)**

10. Treatment Programming

A. Each person shall have a physical and mental examination within forty-eight hours (excluding Saturdays, Sundays, and holidays) of admission. **(27A-12-3.8)**

B. Each person has the right to a comprehensive individualized treatment program developed by appropriate qualified mental health professionals, including a psychiatrist. The treatment plan may not consist solely of chemical or drug therapy unless supported by sufficient psychiatric and medical opinion.

A person has the right, according to his/her capabilities, to participate in the planning of services to be provided. This right includes participation in the development, review, and revision of the treatment program. The person is entitled to a reasonable explanation of:

- a. Such persons' mental and physical condition;
- b. The objective of treatment;
- c. The nature and significant possible adverse effects of recommended treatments;
- d. The reasons why a particular treatment is considered appropriate;
- e. The reason for any limitation on rights; and

- f. Any appropriate and available alternative treatments, services, and types of providers. **(27A-12-3.6)**
- C. Treatment programs shall be designed to achieve discharge at the earliest possible time and to maximize each person's development and skill acquisition. A treatment team qualified mental health professional must periodically review, follow-up, and update all individualized programs. **(27A-12-3.6)**
- D. Each person has the right to an aftercare program which outlines available services and recommendations for continued post-discharge placement or treatment. Participation in the plan is discretionary and refusal to participate shall not be a reason for continued detention. **(27A-12-3.7)**
- E. Within ten days after commitment, the facility or program director shall review the need for continued commitment and assess whether an individualized treatment program has been implemented. If a treatment program has not been implemented within ten days, the person shall be released immediately unless he/she agrees to continue treatment on a voluntary basis. **(27A-12-3.9)**
- F. Within thirty days after the above review and within every ninety days thereafter, the director shall assess whether commitment should be continued. **(27A-12-3.9)**

11. Transfer From Involuntary to Voluntary Status

An involuntarily committed person has the right to apply for a transfer to voluntary status. The transfer shall be forthwith granted unless the person is unable to understand the nature of voluntary status or the transfer would not be in the best interests of the person. **(27A-12-3.10)**

12. Emergency Medical Procedures

Medical procedures may be performed without consent or court order only in a life-threatening emergency where there is not time to obtain consent or court authorization; or, if the patient is incapacitated as defined in **SDCL 34-12C-1** and consent is obtained pursuant to **SDCL 34-12C**. **(27A-12-3.11)**

13. Experimental or Intrusive Procedures

A person has the right to refuse to be subjected to research and experimental or intrusive procedures, including electroconvulsive therapy. Prior to the initiation of such procedures, the facility must obtain the person's written informed consent. If the attending physician determines that the person is incapable of exercising informed consent, such treatment may be provided only if ordered by a circuit court after a hearing. If the court determines that the person is incapable of exercising an informed consent, the court may exercise a substituted judgement on the administration of the treatment. The court, however, may not authorize sterilization for a person incapable of exercising an informed consent. **(27A-12-3.12; 27A-12-3.20)**

14. Refusal of Treatment—Psychotropic Medication

A. Treatment Refusal

A person has the right to refuse any treatment. (27A-12-3.12)

B. Psychotropic Drug Refusal

1. Right to Refuse

If an involuntarily committed person refuses the administration of psychotropic drugs, psychotropic medication may be administered if it is ordered by a court under the criteria in SDCL 27A-12-3.15.

2. Court Petition

A facility may petition the circuit court for authority to administer psychotropic drugs to an involuntarily committed person if, in the opinion of the director or attending psychiatrist and the person's treating physician, the drugs will be medically beneficial and are necessary because:

- a. The person presents as a danger to self or others;
- b. The person cannot improve or his/her condition may deteriorate without the drugs; or
- c. The person may improve without the drugs but only at a significantly slower rate. (27A-12-3.13)

3. Notice—Time of Hearing

The petition and notice of hearing shall be personally served upon the person immediately upon filing of the petition. The notice of hearing shall include:

- a. Notice of time, date, and place of hearing;
- b. Notice of right to counsel and the appointment of counsel if indigent; and
- c. Notice of the right to an independent evaluation at the person's expense or if indigent, the county's expense; and
- d. The cost of any commitment proceedings, treatment, medication and any hearing relating to medication, any post-commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to insure payment.

If counsel has not been retained, the court shall appoint counsel immediately upon filing of the petition. A date shall be set for the hearing within fifteen days of the filing of the petition. The hearing shall be a priority on the court's calendar. One seven-day continuance may be allowed upon a showing of good cause. (27A-12-3.14)

4. Hearing Determination on Competency

The court may exercise a substituted judgement on the administration of psychotropic drugs only upon a showing by clear and convincing evidence that the person is incapable of making an informed treatment decision and the drugs are essential under the criteria listed in #2 above. **(27A-12-3.15)**

5. Time Limit for Court Order

A court order authorizing the administration of psychotropic drugs may not exceed one year. In any event, the court's order shall terminate:

- a. If the person is judicially restored as competent to make the treatment decision; or
- b. The treating physician or medical director/consulting psychiatrist determine that the drugs are no longer necessary. **(27A-12-3.16)**

6. Review of Drug Treatment

The treating physician and medical director/consulting psychiatrist must review the need for continued drug treatment by personal examination of the person at least every thirty days. **(27A-12-3.16)**

7. Emergency Administration of Psychotropic Medication

In an emergency, to prevent serious physical harm to the person or others, a physician may order that psychotropic medication be given to the person for up to ten (10) days. Psychotropic medication may also be given for up to ten (10) days if the attending physician and one other physician determine that the medication is necessary to prevent significant deterioration of the person's mental illness and that the person's potential for improvement would be permanently impaired if the psychotropic medication was not given. **(27A-12-3.23)**

8. Prohibition of Psychosurgery, Aversive Stimuli, and Substantial Deprivations

No person shall be administered or subjected to psychosurgery, aversive stimuli, or substantial deprivation.

"Aversive Stimuli" is defined as: Anything which, because it is believed to be unreasonable unpleasant, uncomfortable, or distasteful to the person, is administered or done to the person for the purpose of reducing the frequency of a behavior but does not include authorized restrictive treatment procedures.

"Substantial Deprivations" is defined as: Includes the withdrawal or withholding of basic necessities or comforts which is intended to subject the person to significant discomfort, inconvenience, or unpleasantness. **(27A-12-3.22)**

9. Restrictive Treatment Procedures

Restrictive Treatment procedures which impose physical restrictions on the person:

- a. Must be part of an individualized treatment program that sets out conditions justifying its use and approved by a peer committee review;
- b. May not be used as punishment or for convenience of staff;
- c. May be implemented only as necessary to prevent assaultive or otherwise harmful behaviors with specific documentation justifying its use;
- d. If physical restraints or seclusion in a separate room is employed, appropriate attention shall be paid every fifteen minutes to the person;
- e. Shall require a written order at least every fifteen days during the first sixty days of the implementation and every thirty days thereafter;
- f. May not be considered seclusion or restraint if carried out as a part of an approved behavioral treatment program. **(27A-12-6.1)**

10. Seclusion or Restraint

The use of seclusion or restraint:

- a. Requires clinical justification and shall be employed only to prevent immediate harm to the person or others;
- b. May not be employed if less restrictive means of restraint are feasible; the rationale for use must address the inadequacy of less restrictive intervention techniques;
- c. May not be employed as punishment or for the convenience of staff;
- d. Must be authorized by a qualified mental health professional, physician's assistant, or nurse practitioner;
- e. Justification of use shall be supported by a personal clinical assessment of the person and documented in the person's records;
- f. May not exceed one hour, at which time an order from a qualified mental health professional, physician's assistant, or nurse practitioner is required if seclusion or restraint is to be continued; such order must be time-limited and shall not exceed twenty-four hours;
- g. May not be used in a manner that causes undue physical discomfort, harm, or pain to the person; appropriate attention shall be paid every fifteen minutes to the person unless more frequent attention is warranted.

11. Grievances

A person may assert grievances with respect to infringement of rights. The person is entitled to have a grievance considered in a fair, timely, and impartial procedure which provides meaningful review. **(27A-12-32.1)**

12. Habeas Corpus

Any person involuntarily committed, confined, detained, or restrained may apply for a writ of habeas corpus. If the court finds that an involuntarily committed person continues to meet the commitment criteria, continued commitment may be authorized. The person may apply for another writ upon alleging that the commitment criteria are no longer met. **(27A-12-32.2)**

13. Exercise of Rights

The provisions of the mental health code may not be construed as replacing or limiting any other rights, benefits, or privileges. The exercise of rights afforded by the code are not subject to any reprisal, including reprisal through the actual or threatened denial of any treatment, benefits, privileges, or other rights. **(27A-12-33.1)**

IV. ACCESS TO AND CONFIDENTIALITY OF INFORMATION

- 1.** All records of proceedings are subject to the confidentiality and access provisions of Chapter 27A-12. Any records of an involuntarily detained person who is released prior to or upon completion of a commitment hearing shall be sealed. **(27A-11A-3)**
- 2.** If a person is admitted, involuntarily committed, or discharged from the Human Services Center, his next of kin or guardian shall be notified unless notification is determined by the attending physician to be detrimental to the person. **(27A-12-34)**
- 3.** A complete statistical and medical record shall be kept for each person receiving mental health services or being detained under the code. A person has the right to access, upon request, to his mental health records. The person, however, may be refused access to:
 - a.** Information in the records provided by a third party under assurance that the information remain confidential; and
 - b.** Specific material in the records if the qualified mental health professional responsible for the mental health services concerned has made a determination in writing that access would be detrimental to the person's health. However, the material may be made available to a similarly licensed qualified mental health professional selected by the person; this professional may, in the exercise of professional judgement, provide the person with access to any or all parts of the material or otherwise disclose the information contained in the material to the person. **(27A-12-25; 27A-12-26.1)**
- 4.** The following information is to be kept confidential and not open to public inspection unless specifically excepted as noted: **(27A-12-27)**
 - A.** Information acquired by a peace officer pursuant to authority under the Code;
 - B.** Records of concluded proceedings for which the information was acquired subject to order of the circuit court;
 - C.** Information in the record of the person and other information acquired in the course of providing mental health services unless:
 - a.** Both the holder of the records and the person, the parent of a minor, or a guardian, consent to disclosure;

- b. Absent consent, only if requested under the following circumstances:
 - 1. Pursuant to orders of subpoena of a court of record or subpoenas of the Legislature;
 - 2. To a prosecuting or defense attorney or to a qualified mental health professional as necessary to participate in a proceeding governed by this title;
 - 3. To an attorney representing a person who is presently subject to the authority of this title;
 - 4. If necessary in order to comply with another provision of law;
 - 5. To the Department of Human Services if the information is necessary for the discharge of a responsibility placed by law;
 - 6. To a state's attorney or the attorney general for purpose of investigation of an alleged criminal act either committed by or upon a patient of the Human Services Center

5. Any release of information by a holder of records shall be:

- A. Approved by the facility director; recorded to include information released, to whom, the date, and purpose of the release. The identity of the person to whom the information pertains may not be disclosed unless germane;
- B. Any person receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. **(27A-12-31; 27A-12-32)**

V. DISCHARGE

1. Discharge of Voluntary Patient

The facility director may at any time discharge a voluntary patient whom the director deems suitable for discharge. **(27A-14.1)**

2. Discharge of Ward

If the facility director or attending psychiatrist determines that a ward no longer requires inpatient treatment and has been accepted for placement in a community setting, the guardian shall remove the ward within three days of notification. Failure to so remove shall result in notice to the guardianship court for further disposition. **(27A-14-1.1)**

3. Discharge Prior to Commitment Hearing

- A. If a person is detained at the Human Services Center pending the commitment hearing, he/she shall be released upon a determination by the administrator that

the commitment criteria are not met. Following the release, the referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. **(27A-14-1.2)**

- B.** If the director of a facility in which a person is detained prior to a commitment hearing determines that the person does not meet the commitment criteria, the director shall so notify the chair of the county board. If the chair agrees, the person shall be released. Transportation to the county where the person was taken into custody shall be provided by the referring county, if the person so desires. **(27A-14-1.3)**

4. Discharge of Involuntarily Committed Patient

An involuntarily committed person shall be discharged when the director of the facility or program of commitment determines that the patient no longer meets the commitment criteria.

The county board must be notified of the discharge and provide the patient with transportation to his/her residence within forty-eight hours, if the patient so desires. **(27A-14-2; 27A-14-3)**

5. Provisional Discharge

A patient may be provisionally discharged. The administrator must notify the county board of the provisions of the discharge which may not extend beyond the duration of the original commitment. **(27A-14-4)**

6. Leave Status

A patient, upon approval of the director, may be placed on a leave status from the facility. A leave may not exceed thirty days and the status may not extend beyond the duration of any involuntary commitment order. While on leave, an involuntarily committed patient shall receive all reviews and hearings mandated by law or be discharged from the commitment order. **(27A-14-1.4)**

7. Public Assistance

The Secretary of Social Services shall provide methods whereby a patient shall be assisted in qualifying for all available public assistance benefits provided by state or federal law. **(27A-14-14)**

VI. COUNTY BOARD OF MENTAL ILLNESS

- 1.** Each county shall have a county board of mental illness, although two or more counties may jointly contract to establish one board serving all contracting counties. **(27A-7-1)**

2. A county board of mental illness shall consist of two people who shall be residents of the county and appointed by the board of county commissioners for a three-year non-consecutive term. A law trained magistrate or lawyer, who need not be a resident of the county, shall serve as the board's chair. The chair shall be appointed by the presiding judge of the county's circuit court.

The state's attorney for the county may not serve on the board of mental illness. The appointing authority may appoint alternative board members. **(27A-7-1)**

3. In the case of the temporary absence or inability of any member or alternate to serve, the remaining board members shall temporarily appoint replacements so that the original composition of the board is retained. **(27A-7-3)**
4. All members of a county board are required to participate in a training and certification program prior to undertaking their duties and at least every three years thereafter. The Department of Human Services is responsible for conducting this training and providing manuals and forms. **(27A-7-9)**
5. The county board has jurisdiction over all petitions for involuntary commitment and is responsible for the safekeeping of persons subject to involuntary commitment within its county. The board may do any act of a court which is necessary and proper for the discharge of its duties. **(27A-7-4)**
6. If it appears that any board member has a conflict of interest, he/she may be removed by a filing of an affidavit with the board chair. Unless the affidavit appears clearly frivolous, it shall be granted. In the event of disqualification, a duly designated alternate or temporary replacement shall serve. **(27A-7-3.1)**
7. Board members shall be compensated at an hourly rate as determined by the county commissioners. Members shall also be reimbursed for mileage and other actual expenses incurred in the performance of their duties. **(27A-7-8)**

VII. OTHER PROVISIONS

1. **State Mental Health Programs:** See SDCL Chapter 27A-3.
2. **South Dakota Human Services Center:** See SDCL Chapter 27A-4.
3. **Local Mental Health Centers:** See SDCL Chapter 27A-5.
4. **Interstate Cooperation in Mental Health Services:** See SDCL Chapter 27A-6.
5. **Costs of Care and Treatment in State Facilities:** See SDCL Chapter 27A-13.
6. **Treatment of Minors:** See SDCL Chapter 27A-15.

PASRR CONTACT LIST

Department of Social Services Nurse Consultants PASRR Level I Contacts

MRT SUPERVISOR
Elizabeth Twamley, RN
Program Manager
700 Governor's Drive
Pierre, SD 57501
Phone: (605)773-3656

Region II
Lana Glanzer, RN
110 3rd Street SW Suite #200
Huron, SD 57350
Phone: (605)353-7112
Fax: (605)353-7103

Region IV
Lori Baltzer, RN
3113 Spruce Suite #200
Yankton, SD 57078
Phone: (605)668-3030
Fax: (605)668-3014

Division of Mental Health PASRR Level II Contacts

Heather Nelson
Program Specialist
Phone: (605)773-5991
Fax: (605)773-7076

Division of Developmental Disabilities PASRR Level II Contacts

Region I
Gale Christensen, RN
510 N Campbell
Rapid City, SD 57709
Phone: (605)394-2525
Fax: (605)394-1899

Region III
LeeAnne Schroeder, RN
1310 Main Ave SW
Brookings, SD 57006
Phone: (605)688-6881
Fax: (605)668-4339

Region V
Tricia Fjerestad, RN
811 E. 10th Street Dept. 4
Sioux Falls, SD 57103-1650
Phone: (605)367-5399
Fax: (605)367-4866

Dixie Erikson, RN
Program Specialist
Phone: (605)773-5991
Fax: (605)773-7076

Carla Wagner, RN
Program Specialist
Phone: (605)773-3438
Fax: (605)773-7562

Pauline Erbele, RN
Program Specialist
Phone: (605)773-3438
Fax: (605)773-7562